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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/515,860	02/29/2000	Daniel A. Argenbright	00368.0029.US01	1512

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BRINKS, HOFER, GILSON & LIONE
IN RE: ALTICOR INC.
P.O. BOX 10395
CHICAGO, IL 60610

EXAMINER

ZURITA, JAMES H

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/515,860

Applicant(s)

ARGENBRIGHT ET AL.

Examiner

James Zurita

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Application of 29 February 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-157 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-157 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,6,8,10. 6) ☐ Other: _____

DETAILED ACTION

Preliminary Amendment

In a Preliminary Amendment of 30 October 2000, applicants added claim 157 and amended a number of original claims 1-156.

Specification

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms that are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are:

Many of the claims refer to registered Client, registered Member, and registered IBO and registered Member Plus singly or in combination. Other claims (for example, claims 4, 22, 25) do not include the word *registered* to

Art Unit: 3625

identify Client, Member, Member Plus and IBO. It is not clear whether applicants claim a patentable distinction, since the specifications appear to state that, by definition, all Client, Member, Member Plus and IBO are registered. Applicants have not shown unregistered Client, Member, Member Plus and IBO. For purposes of this examination, all instances of Client, Member, Member Plus and IBO will be interpreted as referring to users who have undergone a registration process to become registered Client, Member, Member Plus and IBO.

Claims 1, 106, 157, among others, refer to entities as "...eligible to buy *products* at...", that is, ***products only***. Applicant's preliminary amendment changed the term "...products ***and*** services ..." to "...products ***or*** services..." Thus, it is not clear whether applicant intend to narrow the scope of the claims to include only products. For purposes of this examination, the Examiner will give the claims their broadest reasonable interpretation to include *both* products ***and*** services.

Similarly, claim 121 refers to marketing systems products only. Other claims refer to marketing systems products or services. While this omission appears to be an error (see, for example, claims 97 and 106), applicant's preliminary amendment appears to show that it is not an error. It is not clear whether applicants intended to exclude services for this set of claims.

Claims 4, 5, 6 and 5, among others, contain the term "shopping page web file" as found in the specifications. Other claims (for example, claims 107, 119) contain the term "shopping web page file" which is not found in the specifications.

Art Unit: 3625

This appears to be a word processing error. For purposes of this examination, “shopping web page file” will be interpreted to be “shopping page web file.”

Similarly, claims 21, 22, 23 and others contain the term “vendor partner page web file”, as found in the specifications. Other claims (for example, claims 108, 120) contain the term “vendor partner web page file” which is not found in the specifications. Again, this appears to be a word processing error. For purposes of this examination, “vendor partner web page file” will be interpreted to be “vendor partner page web file.”

Claim 82 refers to “member services page web file” a term not found in the specifications, although the term “Member Service page web file” appears. For purposes of this examination, claim 82 will be interpreted to refer to “Member Service page web file.”

The term “list” in claims 4, 5, 6, 11 is indefinite. While update list (claim 9) and updated list (other claims) are defined as an electronic shopping basket / cart, applicant also mentions product list, preferred products list, a list of predetermined products, list of complementary products, list of recommended products, list of laundry-related time saving tips, list of cleaning-related time saving tips, list of recipes of the month, list of categories, standing order list, email lists, among others. For purposes of the examination, the term “list” will be interpreted to refer to updated list, i.e., electronic shopping basket.

Claim 94 defines the term “anonymous user” as having a participant level akin to Client, Member and IBO. However, Fig. 2 and related text define participation levels as Client, Member, Member Plus and IBO. This corresponds

Art Unit: 3625

to participation levels found in Table 2, and how the term "participation level" is used throughout the disclosures.

Similarly, the disclosures specifically defines "anonymous user":

Additionally, **users** who are **not registered** with the marketing system, referred to herein as **anonymous users**, site visitors, surfers, or the like, can navigate through non-restricted portions of the web site and can select items for purchase. In a preferred embodiment, these **anonymous users** must register prior to purchasing the items selected for purchase. (page 46, lines 18-22).

It is not clear what access rights and participation rights are available to an "anonymous user" compared to other types of participants, and whether "individual" (as in claim 75) is different from other types of users, or participants.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-157 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shell et al. (US Patent 6,415,265) in view of Walker et al. (US Patent 6,327,573).

Shell discloses an interactive web-based commerce system for fulfilling orders in a multi-level marketing environment. Shell discloses applicability of his system to products such as books, cosmetics, health supplements, cars, tickets, furniture and automatic order and shipping. Shell also discusses changes in standing orders, cancellations and exchange and other customer support

Art Unit: 3625

features. Shell discloses the use of the Internet, Intranets, Extranets and Portals to connect various portions of the network.

Shell *does not* disclose the use of a shopping cart to hold orders prior to checkout. The use of single or multiple shopping cards in an e-commerce environment is well known to one of ordinary skill in the art. Similarly, it is well known that shoppers may wish to place a product on hold prior to buying it at a later session.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the use of shopping carts as part of an on-line multi-level marketing system such as Shell's. One of ordinary skill in the art at the time the invention was made would have been motivated to include the use of shopping carts as part of Shell system for the obvious reason that companies maintain huge databases to track purchases and derive information concerning user tastes and trends. One common way to hold the information temporarily is by recording purchases in "shopping carts" or "shopping baskets".

It would also have been obvious to one of ordinary skill in the art at the time the invention was made to include holding periods, dormant period and periods after which the cart would be deleted.

One of ordinary skill in the art at the time the invention was made would have been motivated to include holding periods, dormant period and periods after which the cart would be deleted for the obvious reason that shoppers may wish to think about their purchases before paying for them. Thus, a site may hold products on reserve for a user, and the user may be given a certain period within

Art Unit: 3625

which to finalize a purchase. A buyer can use the electronic shopping cart to keep track of what he has selected so far, and how much the contents of the cart will cost. Shopping carts permit efficient shopping sessions, and allows buyers to understand electronic shopping in terms of shopping's physical world analogues.

Shell tracks each user's purchases. Shell discusses multiple levels of compensation. *Shell does not* specifically use the terms Client, Member, Member Plus, IBO to identify levels of users and their compensation schemes. *Shell does not* specifically describe that Client, Member, Member Plus, IBO may buy products or services at prices that are specific to their own level. *Shell does not* use the terms sales qualification level, escalating level, Participation level. However, multi-level marketing provides for *multiple levels* of compensation according to specified criteria and levels. Shell describes several levels of such compensation, referring to them as level 1 commission, level-2 commission, level-3 commission etc. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to disclose compensation to Client, Member, Member Plus, IBO as well as other categories, and permitting users to participate at a starting level. One of ordinary skill in the art at the time the invention was made would have been motivated to disclose compensation to Client, Member, Member Plus, IBO, as well as other categories and permitting users to participate at a starting level, for the obvious reason that names serve to identify compensation levels in the minds of various participants. One would also know to elevate users from their starting level to other levels depending on their activity. The names used to distinguish among different categories are often

Art Unit: 3625

limited only by the collective imagination of a firm's marketing department. Thus one participant may readily recognize his compensation by using an illustrative term (e.g., happy member compensation, or health-conscious role model participant, etc.) where the same participant may be less comfortable with a term such as level-x, or level-y, or level-z compensation (or commission or reward).

Similarly, one of ordinary skill in the art at the time the invention was made would have known to permit users to accumulate points so that they might rise in their level of participation. One of ordinary skill in the art at the time the invention was made would have been motivated to permit users to accumulate points so that they might rise in their level of participation for the obvious reason that it is a good idea to encourage sales in a marketing system where the rewards are based on purchasing and participation activity.

Shell does not specifically discuss that participants may be entitled to purchase products and services at special prices related to their registration and participation levels. Walker discloses that merchants may provide special prices according to membership and affinity groups, frequent flyer program members, etc. The discounts in effect provide members with special prices according to qualifications. (See, for example, Col. 7, lines 13-39).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Shell and Walker to disclose special prices according to membership. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Shell and Walker to disclose special prices according to membership for the obvious reason that

Art Unit: 3625


merchants often use various types of incentive programs to reward buyers according to a buyer's characteristics. For example, frequent shopper cards are used in the retail industry to reward customers for their loyalty and to create incentives for customer patronage. This and other types of programs that give members special prices allow customers to feel as though they are getting a fair deal or an added bonus when they purchase more products.

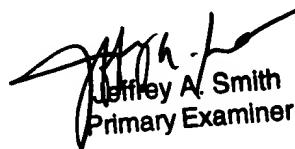
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8:30 am to 5:00 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

 **James Zurita**
Patent Examiner
Art Unit 3625
2 September 2003


Jeffrey A. Smith
Primary Examiner